

## Persons with Mental Illnesses in Nursing Homes

Testimony Prepared for Joint Senate Committee Hearing on Nursing Home Safety  
November 5, 2009

Illinois has long struggled with problems relating to the placement of persons with mental illnesses in nursing homes. Unfortunately, despite periodic attention from the media and from various government agencies, we have not yet created a thoughtful and systematic response to these problems. There are serious systemic problems with our excessive reliance on nursing homes as placements for persons with mental illnesses, with the way many nursing homes treat persons with mental illnesses and with the government regulation of the treatment of persons with mental illnesses in nursing homes.

In addressing these serious problems, it is important to remember:

- Like any other type of facility, there are nursing homes that are better and those that are worse.
- Most person with mental illnesses are not dangerous and are not criminals.
- Most of the over 260,000 persons in Illinois diagnosed with two of the most serious mental illnesses—schizophrenia and bipolar disorder—are not living in any type of institution; nor do they belong in one.
- Most criminals are not mentally ill.
- Persons who need to reside in a nursing home due to the infirmities associated with old age or physical disability are not immune from mental illnesses. Thus, no matter what policy choices Illinois makes about the placement of persons who are in nursing homes *only* because they have a serious mental illness, it will be important to insure that elderly and physically disabled persons are provide with adequate and humane mental health services when needed.

Specific serious problems involving the placement of persons with mental illnesses in nursing homes include:

- Inadequate intake screening and assessment
- Insufficient staff
- Staff lacks training/expertise regarding the diagnosis/assessment and treatment of persons with mental illnesses

- Inadequate understanding of and monitoring of use of psychotropic medications
- Government oversight of the quality and quantity of mental health services provided in nursing homes has been inadequate.
- Absence of a recovery focus and discharge planning
- Failure of nursing homes classified as “Institutes for Mental Diseases” (IMD) and specialized mental health units within other nursing homes to comply with the Mental Health and Developmental Disabilities Code as required by *Muellner v. Blessing Hospital*, 335 Ill. App. 3d 1079; 782 N.E.2d 799; 270 Ill. Dec. 240 (2002)
- Unnecessary placement of persons with mental illnesses in nursing homes, particularly in IMD nursing homes.

Recommendations:

1. The Governor should settle the *Williams v. Blagojevich* litigation which seeks to insure that only those persons who need institutional care are placed in nursing homes.
2. The Illinois Department of Public Health should enforce the *Muellner* decision by enacting and enforcing specific new regulations.
3. The Illinois Department of Public Health should hire more staff with mental health expertise to oversee nursing homes.
4. The nine inpatient psychiatric facilities operated by the Department of Human Services, Division of Mental Health should refrain from discharging persons to nursing homes unless the need for such a placement is based upon a condition other than a mental illness.
5. Remove all persons from nursing homes who are there *solely* due to a mental illness.
6. Use the money saved from reducing the number of person with mental illnesses in nursing homes to fund supportive housing, Assertive Community Treatment, peer support services, supported employment and other recovery-oriented services.
7. Adopt the attached legislation

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## **Proposals Regarding Persons with Mental Illnesses in Nursing Homes**

1. Prohibit the placement of persons with mental illnesses in nursing homes unless their need for placement is based upon a condition other than their mental illness.

### **210 ILCS 45/2 201.5. Screening prior to admission.**

(a) All persons age 18 or older seeking admission to a nursing facility must be screened to determine the need for nursing facility services prior to being admitted, regardless of income, assets, or funding source. In addition, any person who seeks to become eligible for medical assistance from the Medical Assistance Program under the Illinois Public Aid Code to pay for long term care services while residing in a facility must be screened prior to receiving those benefits. Screening for nursing facility services shall be administered through procedures established by administrative rule. Screening may be done by agencies other than the Department as established by administrative rule. This Section applies on and after July 1, 1996.

(b) In addition to the screening required by subsection (a), a facility, except for those licensed as long term care for under age 22 facilities, shall, within 24 hours after admission, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons age 18 or older seeking admission to the facility. Background checks conducted pursuant to this Section shall be based on the resident's name, date of birth, and other identifiers as required by the Department of State Police. If the results of the background check are inconclusive, the facility shall initiate a fingerprint based check, unless the fingerprint check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of potential risk which may be established by Departmental rule. A waiver issued pursuant to this Section shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. The facility shall provide for or arrange for any required fingerprint based checks to be taken on the premises of the facility. If a fingerprint based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident.

A facility, except for those licensed as long term care for under age 22 facilities, shall, within 60 days after the effective date of this amendatory Act of the 94th General Assembly, request a criminal history background check pursuant to the Uniform Conviction Information Act for all persons who are residents of the facility on the effective date of this amendatory Act of the 94th General Assembly. The facility shall review the results of the criminal history background checks immediately upon receipt thereof. If the results of the background check are inconclusive, the facility shall initiate a fingerprint based check unless the fingerprint based check is waived by the Director of Public Health based on verification by the facility that the resident is completely immobile or that the resident meets other criteria related to the resident's health or lack of

potential risk which may be established by Departmental rule. A waiver issued pursuant to this Section shall be valid only while the resident is immobile or while the criteria supporting the waiver exist. The facility shall provide for or arrange for any required fingerprint based checks to be taken on the premises of the facility. If a fingerprint based check is required, the facility shall arrange for it to be conducted in a manner that is respectful of the resident's dignity and that minimizes any emotional or physical hardship to the resident.

(c) If the results of a resident's criminal history background check reveal that the resident is an identified offender as defined in Section 1 114.01, the facility shall immediately fax the resident's name and criminal history information to the Illinois Department of Public Health, which shall conduct a Criminal History Analysis pursuant to Section 2 201.6. The Criminal History Analysis shall be conducted independently of the Illinois Department of Public Health's Office of Healthcare Regulation. The Office of Healthcare Regulation shall have no involvement with the process of reviewing or analyzing the criminal history of identified offenders.

(d) The Illinois Department of Public Health shall keep a continuing record of all residents determined to be identified offenders under Section 1 114.01 and shall report the number of identified offender residents annually to the General Assembly.

(e) No person may be admitted to any long-term care facility as defined in this Act when such placement is for the sole purpose of providing mental health services as defined in the Mental Health and Developmental Disabilities Code.

2. Amend the MHDDCode to prohibit DHS from discharging persons from state- operated hospitals to IMDs

**405 ILCS 5/3-902. Director initiated discharge.**

(a) The facility director may at any time discharge an informal, voluntary, or minor recipient who is clinically suitable for discharge.

(b) The facility director shall discharge a recipient admitted upon court order under this Chapter or any prior statute where he is no longer subject to involuntary admission. If the facility director believes that continuing treatment is advisable for such recipient, he shall inform the recipient of his right to remain as an informal or voluntary recipient.

(c) When a facility director discharges or changes the status of a recipient pursuant to this Section he shall promptly notify the clerk of the court which entered the original order of the discharge or change in status. Upon receipt of such notice, the clerk of the court shall note the action taken in the court record. If the person being discharged is a person under legal disability, the facility director shall also submit a certificate regarding his legal status without disability pursuant to Section 3 907.

(d) When the facility director determines that discharge is appropriate for a recipient pursuant to this Section or Section 3 403 he or she shall notify the state's attorney of the county in which the recipient resided immediately prior to his admission to a mental health facility and the state's attorney of the county where the last petition for

commitment was filed at least 48 hours prior to the discharge when either state's attorney has requested in writing such notification on that individual recipient or when the facility director regards a recipient as a continuing threat to the peace and safety of the community. Upon receipt of such notice, the state's attorney may take any court action or notify such peace officers that he deems appropriate.

(e) The facility director may grant a temporary release to a recipient whose condition is not considered appropriate for discharge where such release is considered to be clinically appropriate, provided that the release does not endanger the public safety.

(f) No person may be discharged from a Department mental health facility to any long-term care facility classified as an Institute for Mental Diseases under Federal Medicaid law. Nothing in this Section shall be deemed to prevent the transfer of any person from one Department mental health facility to another Department mental health facility

3. Amend the Mental Health Administrative Code to prohibit DHS from discharging persons from state-operated hospitals to IMDs

**20 ILCS 1705/15**

Before any person is released from a facility operated by the State pursuant to an absolute discharge or a conditional discharge from hospitalization under this Act, the facility director of the facility in which such person is hospitalized shall determine that such person is not currently in need of hospitalization and:

(a) is able to live independently in the community; or

(b) requires further oversight and supervisory care for which arrangements have been made with responsible relatives or supervised residential program approved by the Department; or

(c) requires further personal care or general oversight as defined by the Nursing Home Care Act, for which placement arrangements have been made with a suitable family home or other licensed facility approved by the Department under this Section; or

(d) requires community mental health services for which arrangements have been made with a community mental health provider in accordance with criteria, standards, and procedures promulgated by rule.

No person released from a facility operated by the State pursuant to an absolute discharge or conditional discharge from hospitalization under this Act shall be placed in any long-term care facility classified as an Institute for Mental Diseases under Federal Medicaid law.

4. Codify (or expand) the Illinois Appellate Court decision in *Muellner v. Blessing Hospital*, 335 Ill. App. 3d 1079; 782 N.E.2d 799; 270 Ill. Dec. 240 (2002) (applies the MHDDCode to nursing homes for people with mental illnesses).

**405 ILCS 5/1 114**

"Mental health facility" means any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, long-term care facilities as defined in the Nursing Home Care Act, evaluation facilities, and mental health centers which provide treatment for such persons.

**405 ILCS 5/1-123 (Alternative One)**

"Recipient of services" or "recipient" means a person who has received or is receiving treatment or habilitation. Recipient includes any person receiving mental health services in a long-term care facility as defined in the Nursing Home Care Act.

or

**405 ILCS 5/1-123 (Alternative Two)**

"Recipient of services" or "recipient" means a person who has received or is receiving treatment or habilitation. Recipient includes anyone residing in a long-term care facility as defined in the Nursing Home Care Act provided that the primary reason for the placement of the recipient in the facility is for the treatment of her or his mental illness.

**405 ILCS 5/3-200**

(a) A person may be admitted as an inpatient to a mental health facility, including any long-term care facilities as defined in the Nursing Home Care Act, for treatment of mental illness only as provided in this Chapter, except that a person may be transferred by the Department of Corrections pursuant to the Unified Code of Corrections. A person transferred by the Department of Corrections in this manner may be released only as provided in the Unified Code of Corrections.

(b) No person who is diagnosed as mentally retarded or a person with a developmental disability may be admitted or transferred to a Department mental health facility or, any portion thereof, except as provided in this Chapter. However, the evaluation and placement of such persons shall be governed by Article II of Chapter 4 of this Code.

**405 ILCS 5/6-108 (New)**

In the event of any conflict between the provisions of this Act and the Nursing Home Care Act, the provisions of the Nursing Home Care Act shall govern.

## **MUELLNER v. BLESSING HOSPITAL**

335 Ill. App. 3d 1079; 782 N.E.2d 799; 270 Ill. Dec. 240 (2002)

Appeal from Circuit Court of Adams County No. 01P228 Honorable Thomas J. Ortbal, Judge Presiding.

PRESIDING JUSTICE MYERSCOUGH delivered the opinion of the court:

In January 2002, the trial court found respondent, Sandra Muellner, to be a disabled adult and appointed petitioner, the Office of State Guardian (State Guardian), as limited guardian of her person. Respondent appeals, arguing the trial court erred in authorizing the State Guardian to place her in a nursing home's behavioral unit without proceeding for her involuntary commitment under chapter III of the Mental Health and Developmental Disabilities Code ( 405 ILCS 5/3-100 through 3-1003).

### **I. BACKGROUND**

In September 2001, respondent was 55 years old and resided in Hotel Quincy Apartments. The manager noticed respondent holding a towel in her arms and acting like she had a baby. A maid convinced respondent to go to Blessing Hospital (Blessing), where she was voluntarily admitted as an inpatient to an adult psychiatric unit. In October 2001, Melissa Penn, a social worker at Blessing, filed a guardianship petition and a petition for temporary guardianship. Penn alleged respondent was a disabled person because she was unable to care for herself and she suffered from chronic paranoid schizophrenia with delusions. The petitions sought to appoint the State Guardian as guardian of respondent's person with authority to make residential placement. The trial court appointed the State Guardian as respondent's temporary guardian for up to 60 days. The trial court authorized the State Guardian to make residential placement.

In November 2001, the State Guardian, as respondent's temporary guardian, placed respondent with New Horizons in Sycamore Health Care (Sycamore), a 24-hour skilled nursing facility. New Horizons is a behavioral unit that works to stabilize psychiatric patients. It has an in-house psychiatrist and offers group therapy classes. The facility is not locked, but access to other areas of Sycamore or the outside community is restricted until the resident gains levels of trust.

In January 2002, the trial court held a hearing on Penn's guardianship petition. Dr. Lee Johnson, a psychiatrist, treated respondent for schizophrenia. Dr. Johnson noted that respondent rarely took prescribed medication. Julie Irvine of the West Central Illinois Center for Independent Living testified for respondent. Irvine stated respondent was capable of living independently in the community with visits by personal assistants to her home. Respondent filed a motion to limit the proposed guardian's power to place her in a nursing home. After taking the matter under advisement, the trial court denied respondent's motion as moot and appointed the State Guardian as limited guardian of respondent's person. The trial court granted the State Guardian authority to place respondent in a group home, shelter-care facility, or in the community. The trial court conditioned the State Guardian's authority to residentially place respondent in a skilled-care nursing facility; the State Guardian had to determine that respondent's placement in a less

restrictive environment would cause substantial harm to her.

## II. ANALYSIS

Respondent argues the trial court erred in authorizing the State Guardian to place her in a nursing home's behavioral unit without proceeding for her involuntary commitment under chapter III of the Mental Health Code ( 405 ILCS 5/3-100 through 3-1003).

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### Nursing Home as a Mental Health Facility

Section 11a-3(a) of the Probate Act of 1975 (Probate Act) ( 755 ILCS 5/11a-3(a)) authorizes a trial court to appoint a guardian for a disabled person. A guardian of the person has custody of the ward. 755 ILCS 5/11a-17(a). The guardianship order may specify the conditions on which the guardian may admit the ward to a residential facility without further court order. 755 ILCS 5/11a-14.1 . However, a trial court may not grant a guardian the power to admit a nonconsenting ward to a mental health facility for treatment as a voluntary patient. *In re Gardner*, 121 Ill. App. 3d 7, 12, 459 N.E.2d 17, 20, 76 Ill. Dec. 608 (1984). Section 3-200(a) of the Mental Health Code ( 405 ILCS 5/3-200(a)) provides that "[a] person may be admitted as an inpatient to a mental health facility for treatment of mental illness only as provided in" chapter III of the Mental Health Code.

In the present case, the trial court authorized the State Guardian to admit respondent to a skilled-care nursing facility, and the State Guardian placed respondent in New Horizons, which is a behavioral unit of a skilled-care nursing facility. Although the State Guardian has confessed error, this court is not bound by a confession of error. *People v. Lavallier*, 298 Ill. App. 3d 648, 649, 698 N.E.2d 704, 705, 232 Ill. Dec. 613 (1998). Therefore, we decide whether a nursing home's behavioral unit qualifies as a "mental health facility" under the Mental Health Code.

Section 1-114 of the Mental Health Code ( 405 ILCS 5/1-114) defines "mental health facility" as:  
any licensed private hospital, institution, or facility or section thereof, and any facility, or section thereof, operated by the State or a political subdivision thereof for the treatment of persons with mental illness and includes all hospitals, institutions, clinics, evaluation facilities, and mental health centers which provide treatment for such persons.

Section 1-113 of the Mental Health Code ( 405 ILCS 5/1-113) defines "licensed private hospital" as:

any privately owned home, hospital, or institution, or any section thereof which is licensed by the Department of Public Health and which provides treatment for persons with mental illness.

The State Guardian claims that the definition of "mental health facility" is limited to those facilities with a "primary purpose" of treating mental illness. Amicus curiae suggests that any

nursing home may become a "mental health facility" if a single mentally ill person is admitted for mental health treatment. We reject these interpretations because they depart from the plain language of section 1-114. See *People v. Ellis*, 199 Ill. 2d 28, 39, 765 N.E.2d 991, 997, 262 Ill. Dec. 383 (2002).

Instead, we determine that New Horizons qualifies under the "licensed private hospital" portion of the definition of a "mental health facility" in section 1-114 of the Mental Health Code. As this court noted in *In re Moore*, 301 Ill. App. 3d 759, 766, 704 N.E.2d 442, 446, 235 Ill. Dec. 93 (1998), sections 1-113 and 1-114 of the Mental Health Code recognize that a facility may have sections for the treatment of mentally ill persons. The record shows that Sycamore is licensed by the Illinois Department of Public Health and New Horizons, a section of Sycamore, provides treatment for persons with mental illness.

Therefore, the trial court erred in permitting the State Guardian to place respondent in a mental health facility without requiring the State Guardian to proceed under the Mental Health Code.

### III. CONCLUSION

For the reasons stated, we reverse the portion of the trial court's limited guardianship order that authorizes the State Guardian to place respondent in a skilled-care nursing facility to the extent it allows the State Guardian to admit respondent to a mental health facility without complying with the Mental Health Code. We affirm the trial court in all other respects and direct the trial court on remand to enter an order restricting the State Guardian's authority to admit respondent to a mental health facility without complying with the Mental Health Code.

KNECHT and APPLETON, JJ., concur.